United Nations A/C.6/56/SR.2

General Assembly
Fifty-sixth session

Official Records

Distr.: General
7 December 2001
English
Original: Spanish

Sixth Committee

Summary record of the 2nd meeting
Held at Headquarters, New York, on Monday, 8 October 2001, at 10 a.m.

Chairman: Mr. Lelong ..... (Haiti)

Contents

Statement by the Chairman

Election of the Bureau

Organization of work

Agenda item 161: Report of the United Nations Commission on International Trade Law on the work of its thirty-fourth session

This record is subject to correction. Corrections should be sent under the signature of a member of the delegation concerned *within one week of the date of publication* to the Chief of the Official Records Editing Section, room DC2-750, 2 United Nations Plaza, and incorporated in a copy of the record.

Corrections will be issued after the end of the session, in a separate corrigendum for each Committee.

01-56873 (E)

The meeting was called to order at 10.10 a.m.

Statement by the Chairman

1. **The Chairman** thanked the members of the Committee for the confidence they had shown him in electing him Chairman, and said that he would need their full support in order to accomplish his task.

Election of the Bureau

2. *Mr. Abdalla (Sudan), Mr. Hetesy (Hungary) and Mr. Marschik (Austria) were elected Vice-Chairmen by acclamation.*

3. *Mr. Al-Naman (Saudi Arabia) was elected Rapporteur by acclamation.*

Organization of work (A/C.6/56/L.1)

4. **The Chairman**, referring to the note by the Secretariat on the organization of work of the Committee (A/C.6/56/L.1), said that, as a consequence of cost-saving and other measures mandated by the General Assembly, the Committee would have an average of nine meetings per week. The work programme proposed in section 3 of the document was subject to review and would be applied with flexibility in the light of the progress made in the work of the Committee. He then turned to the proposed timetable, which was the outcome of informal consultations convened by the Legal Counsel.

5. Agenda item 166 (Measures to eliminate international terrorism) had received solemn and poignant attention in the General Assembly in the previous week; at the conclusion of the plenary debate, the President of the Assembly had requested the Sixth Committee to expedite its work on the item and submit its report to the Assembly as early as possible, preferably by 15 November 2001. He intended to consult with the Bureau on the way in which the item could be taken up expeditiously.

6. He underscored the need for more efficient use of the time, conference resources and facilities made available to the Committee. With regard to time, he referred to paragraph 65 of annex V of the Rules of Procedure of the General Assembly. With regard to resources and facilities, he said that at the previous session, as at the one before that, the utilization of conference resources by the Committee had been below the 80 per cent benchmark established by the Committee on Conferences, owing to time lost as a result of late starting and early adjournment of meetings. He emphasized the need for new efforts in that regard.

7. As to the dates set aside for the general debate, he said that it might be useful to use any time left over during the earlier part of the session to advance the discussion of items planned for the week of the general debate, such as those relating to observer status in the General Assembly. He also drew attention to section IV of the note by the Secretariat concerning the Working Group: pursuant to General Assembly resolution 55/158, the work of the Ad Hoc Committee established pursuant to resolution 51/210 would continue during the fifty-sixth session in the framework of a working group of the Sixth Committee. It was his understanding that the Committee wished to elect Mr. Rohan Perera (Sri Lanka) as Chairman of that Working Group; pursuant to paragraph 9 of General Assembly resolution 51/210, the Ad Hoc Committee was open to all States Members of the United Nations or members of specialized agencies. If he heard no objections, he would take it that the Committee wished to apply that formula to the Working Group.

8. *It was so decided.*

Agenda item 161: Report of the United Nations Commission on International Trade Law on the work of its thirty-fourth session (A/56/17 and A/56/315)

9. **Mr. Ogarrio Ramírez-España** (Mexico), speaking as Chairman of the United Nations Commission on International Trade Law (UNCITRAL), said that, during its most recent session, the Commission, which had always distinguished itself by its intense and productive work, had completed the draft Convention on assignment of receivables in international trade and on the draft UNCITRAL Model Law on Electronic Signatures and the draft Guide to its enactment. The former text, once adopted as a convention, would promote the availability of credit at more affordable rates by reducing risk, which was directly linked to cost-reduction and an increase in the amount of credit available. By way of example, article 9 established that an assignment of future receivables and of receivables that were not identified individually would be effective from the time the assignment was made. That forward-looking provision would enable businesses in developing countries to obtain credit by offering their future income as security, and it would

also benefit developed countries, because in some of them future income could not be used as security for credit.

10. The Convention on the assignment of receivables would be another instrument geared to economic and social development, the reduction of poverty and, ultimately, the promotion of peace and stability in all countries and in international relations. The Commission was satisfied that the draft Convention had received sufficient consideration and had reached the level of maturity for it to be generally acceptable to States. He therefore recommended that its opinion should be taken into account and that the General Assembly would finally adopt the draft Convention, without reconsidering the substance of its provisions.

11. On the question of electronic signatures, he said that the increased use of electronic authentification techniques as substitutes for hand-written signatures and other traditional authentification procedures had emphasized the need for a legal framework to reduce uncertainty as to the legal effects of such techniques. Five years earlier, UNCITRAL had adopted the Model Law on Electronic Commerce, an instrument which had placed the Commission at the forefront of developments in the field of electronic commerce. On the basis of article 7 of the Model Law, UNCITRAL had drafted the Model Law on Electronic Signatures to assist States in establishing a modern, harmonized and fair legislative framework to address more effectively issues related to electronic signatures.

12. The new Model Law offered practical standards against which the technical reliability of electronic signatures could be measured and provided a linkage between such technical reliability and the legal effectiveness that could be expected from a given electronic signature. The Model Law was intended to foster the understanding of electronic signatures and the confidence that certain electronic signature techniques could be relied upon, from a legal point of view, in significant transactions. Moreover, by establishing with appropriate flexibility and technological neutrality a set of basic rules of conduct for the various parties involved in the use of electronic signatures, the Model Law could assist in shaping more harmonious commercial practices in cyberspace.

13. Pursuant to the mandate received from the Commission at its thirty-third session, the Working Group on Insolvency Law was developing a comprehensive statement of key objectives for a strong debtor-creditor regime in insolvency cases, including aspects related to the procedure of restructuring insolvent companies out of court, and a legislative guide with flexible approaches to achieving those objectives.

14. The Commission had noted the progress made by the Working Group on the topics it had discussed, namely, the requirement of a written form for the arbitration agreement, issues relating to interim measures of protection, and the preparation of a model law on conciliation. The Commission had requested the Working Group to proceed as a matter of priority with the preparation of draft legislative provisions on conciliation, with a view to presenting a draft model law to the Commission for consideration and adoption at its thirty-fifth session in 2002. Conciliation was extremely useful in the settlement of commercial disputes and suitable legislation was needed to eliminate obstacles to its use.

15. With regard to electronic commerce, the two Model Laws adopted by UNCITRAL represented a significant contribution towards enhancing legal certainty in international trade. However, as electronic means of communication increasingly replaced paper documents, it was becoming more and more difficult to eliminate obstacles to electronic commerce and avoid disparities in the legal treatment of transactions conducted through electronic means.

16. At its most recent session, the Commission had decided that a Working Group should be entrusted with the preparation of an international instrument dealing with other issues related to electronic contracting. The Commission had also entrusted the Secretariat with the preparation of the necessary studies concerning three other topics: (a) a comprehensive survey of possible legal barriers to the development of electronic commerce in international instruments; (b) a further study of the issues related to transfer of rights, in particular, rights in tangible goods, by electronic means and mechanisms for publicizing and keeping a record of acts of transfer or the creation of security interests in such goods; and (c) a study on the UNCITRAL Model Law on International Commercial Arbitration, as well as the UNCITRAL Arbitration Rules, to assess their appropriateness for meeting the specific needs of online arbitration.

17. Despite the international efforts to harmonize and unify transport law, existing national laws and international conventions had left significant gaps regarding the functioning of bills of lading and seaway bills, the relation of those transport documents to the rights and obligations between the seller and the buyer of the goods and the legal position of the entities that provided financing to a party to the contract of carriage. Disparities between national legal provisions constituted an obstacle to the free flow of goods and increased the cost of transactions. The growing use of electronic means of communication further aggravated those weaknesses and created the need for uniform provisions. Against that background, the Commission had decided that a working group should consider issues for possible future work in the area of transport law, including issues of liability.

18. Another significant challenge that the Commission had decided to take up concerned security interests, which were an essential component of most lending and financing transactions. International experience had shown that modern secured credit laws could have a significant impact on the availability and cost of credit and thus on international trade. A modern regime in that area could also help to alleviate the inequalities in the access to lower-cost credit and in the share of developing countries in the benefits of international trade.

19. From 2 to 4 July 2001, the Secretariat had held a Colloquium on Privately Financed Infrastructure: Legal Framework and Technical Assistance, with the co-sponsorship and organizational assistance of the Public-Private Infrastructure Advisory Facility, a technical assistance facility aimed at helping developing countries to improve the quality of their infrastructure through private sector involvement. Various recommendations had been made at the Colloquium for dissemination of the UNCITRAL Legislative Guide on Privately Financed Infrastructure Projects, which had been adopted by the Commission at its thirty-third session. Mindful of the significant demand for model legislation providing for more specific guidance, especially in developing countries and in countries with economies in transition, the Commission had decided to entrust a working group with the task of drafting model provisions dealing with some of the substantive issues identified in the Guide.

20. The General Assembly had instructed the Commission to promote the progressive harmonization and unification of the law of international trade, inter alia, by promoting ways and means of ensuring a uniform interpretation and application of international conventions and uniform laws and by collecting and disseminating information on national legislation and modern developments, including case law, in the field of international trade. An important step in that direction had been the establishment of the CLOUT system in 1988. The Commission had decided to reconsider the question of how it should contribute to the uniform interpretation of the texts resulting from its work. Such reconsideration was timely, as evidenced by the fact that, since the establishment of the CLOUT system, 393 cases had been reported, including more than 250 on the United Nations Convention on Contracts for the International Sale of Goods. In the light of the fact that divergences in its interpretation had been noted, it had been repeatedly suggested by users of that material that appropriate advice and guidance would be useful to foster a more uniform interpretation of the Convention.

21. Following consideration of a sample analytical digest of court and arbitration cases on specific issues arising under the Convention, the Commission had requested the Secretariat to prepare a digest on the entire Convention as it considered that such a digest would be of particular value for countries that had no specific literature on the Convention. It was also noted that, as an UNCITRAL document, it would be widely distributed and would take a more international view than the majority of existing commentaries and papers.

22. At its previous session, the Commission had decided to recommend that the General Assembly should approve the enlargement of the Commission's membership, since it felt that such an enlargement would ensure the representation of all legal traditions and economic systems in view of the substantial increase in the membership of the Organization. In addition, the Commission would thereby be in a better position to implement its mandate as it would be able to draw on a pool of experts from an increased number of countries, thus enhancing the acceptability of its texts. The enlargement would also facilitate coordination with the work of other organizations active in the unification of private law to the extent that there would be a greater overlap between the membership of the Commission and the membership of those organizations.

23. The Commission was faced with an unprecedented increase in its workload. In general, the annual session of the Commission lasted two or three weeks (occasionally four) and its three working groups each had two annual sessions. It was clear, therefore, that, with only six annual sessions, it would be possible to devote only one annual session of a working group to each project. Consequently, the Commission had decided to arrange for two working groups to share the same two-week meeting period, one session being held in the first week and the other during the second week, in other words two sessions back-to-back. That made it necessary to revise a manner in which conference time was utilized and the way in which the reports of the working groups were prepared and adopted. In order to make the optimum use of conference facilities, the Commission had agreed that working groups would hold substantive deliberations during the first eight half-day meetings and that the Secretariat would prepare a draft report on the entire session for adoption at the 10th and last meeting of a working group. In order to make it possible for the working groups to adopt the entire report, the Commission had agreed that at the 10th meeting the Chairman would summarily read out the main conclusions reached by a working group at its 9th meeting for subsequent incorporation in the final report prepared by the Secretariat. It had also invited delegations to hold informal consultations prior to actual meetings, thus reserving conference time only for those issues that required extensive deliberations.

24. Those arrangements were essentially intended to allow the Commission to cope with the increased number of topics on which harmonization efforts had been called for by Member States, international organizations and the private sector. The Commission could not meet the demand for services without a commensurate upgrade in the secretariat resources available to it.

25. The tragic events of the previous month had prompted the United Nations as a whole and the Sixth Committee in particular to increase their efforts to combat terrorism in all its forms. It was, however, important not to lose sight of the many other important activities of that unique Organization or of the way in which it helped to establish healthier and friendlier relations among States.

26. The relationship between trade facilitation, the rule of law and international peace had not been forgotten by the Secretariat. In his statement at the opening of the thirty-fourth session of the Commission, the Under-Secretary-General for Legal Affairs and Legal Counsel of the United Nations, Mr. Hans Corell, had said, "Peace remains a distant dream, as long as there is no respect for the rule of law, both domestically and in international affairs. Fairness and impartiality are needed in all branches of the law, not only in constitutional, criminal or procedural law. A legal system is one unity, and commercial law is an essential part of it: it sets out the rules for the proper functioning of economic activities. And a healthy economic system, as we nowadays know, is one fundamental component of political and social stability. The same reasoning applies in the international arena. In order to grow, international trade and foreign investment require clear and predictable rules that are applied by as many countries as possible. Expanding trade and growing foreign investment, in turn, are the foundation of healthy economic relations between States and may go a long way to prevent conflicts or heal the wounds caused by them". The work of the International Law Commission and of the Sixth Committee had done much to foster friendly relations among nations and to lay the legal foundation for international peace and security.

27. By seeking to enlarge its membership, the Commission had endeavoured to ensure the active participation of a broader spectrum of countries and legal systems in the law-making process. By adjusting its working methods to accommodate a growing workload, it was making a contribution to the ongoing reform efforts of the Organization and demonstrating its commitment to make the best possible use of the resources available. However, enhanced efficiency in the Commission's work might not bear fruit if it was not accompanied by a significant — not merely marginal — strengthening of the Commission's secretariat, the International Trade Law Branch of the Office of Legal Affairs.

28. Despite the increase in its workload, the Commission's secretariat had the same number of officers as it had had over 30 years earlier. At that time, only one international instrument had been in preparation and no UNCITRAL instrument had entered into force. Currently, its secretariat was fully occupied with at least eight major projects (settlement of commercial disputes, insolvency law, electronic commerce, privately financed infrastructure projects, transport law, security interests, digest of United

Nations Sales Convention case law, and case law on UNCITRAL texts). Thus, the secretariat's workload was more than double that of the past and there was no more than one officer for each project; the situation had become untenable and, if not corrected, might seriously impair the Commission's work in the future.

29. The preparation of instruments was only one aspect of the problem; everyone knew that that work must be complemented by training, information and technical assistance activities, particularly for the benefit of developing countries and countries with economies in transition. However, even where technical assistance was not provided directly by the UNCITRAL secretariat, the success of the Commission's harmonization efforts depended on ensuring a high level of coordination between all agencies involved; that function could not be delegated to other organizations. There had been a continuous increase in the complexity of the coordinating task. There were five trade law conventions in force; five model laws were being implemented by an increasing number of countries; and another convention and another model law had recently been adopted. The number of requests for training and legislative assistance far exceeded what could be handled by fewer than 10 professional staff, who also had to handle other duties. The progressive harmonization and unification of law would not be a complete process if the adoption of international conventions and model laws by States was not adequately promoted or if those texts were not made known to their end-users. Unless that was done, the effort, time and money invested in their preparation by the international community would be wasted, and that must not be allowed to happen. He therefore hoped that, at a time when the United Nations was considering measures to improve efficiency, the Committee would echo the concerns of States members of UNCITRAL that the restraints it faced had reached an alarming level. In order for the reform to be meaningful, it could not be reduced to a mere "cut-down/cut-back" exercise; individual activities and programmes must be given the means and resources commensurate with their importance.

30. **Mr. Maquieira** (Chile), speaking on behalf of the Rio Group, said that the draft Convention on Assignment of Receivables in International Trade was a balanced text that would help to increase the supply of capital and credit at less burdensome rates of interest and help States to update and harmonize their legislation in that area. With regard to the Model Law on Electronic Signatures, the Rio Group was convinced that its adoption would help to guarantee judicial security for the automated processing of data in international trade. When including its provisions in their respective national legislations, States should take into account the need to ensure that its objectives were not undermined. With regard to future work in the field of electronic commerce, the Rio Group agreed that a broad approach must be adopted in dealing with the issues related to electronic transactions and care taken to avoid any interference in the regime established by the United Nations Convention on Contracts for the International Sale of Goods. It also supported the decision to elaborate a flexible legislative guide that was capable of harmonizing existing laws on insolvency while promoting commercial exchanges and agreed, in that regard, that it was essential to provide training for professionals and officials in the judicial branch in order to ensure the proper functioning of the regime. It was also following with great interest the Commission's work relating to the requirement of written form for the arbitration agreement, measures of protection and the preparation of a model law on conciliation. With regard to work on transport law, the items, including responsibility for ensuring that the provisions of other agreements were not prejudiced, required careful study. With regard to privately financed infrastructure projects, it was necessary that all of the complementary work should be done at a later stage, in order to facilitate evaluation of the practical usefulness of the Legislative Guide.

31. With regard to an increase in the number of Commission members, the Rio Group believed that any enlargement should guarantee that the Commission would continue to be representative of all juridical and economic regimes and systems, while maintaining its efficiency. The enlargement should be limited to 60 members, and the percentages of participation of the different regional groups should ideally have a structure similar to that of the Economic and Social Council. In order for the enlargement to translate into effective participation by all the members, it should be accompanied by the implementation of the provisions of paragraphs 7 to 10 of resolution 55/151, which drew attention to the need to grant travel assistance to the representatives of developing countries to enable them to attend meetings of the Commission and its working groups and the need to strengthen the Commission's training and technical assistance programmes,

particularly in those countries. With regard to the Commission's methods of work, the Rio Group valued the effort to resolve the difficulties caused by the increase in the volume of commercial exchanges between States but regretted that the consequent proliferation of working groups had limited the participation of members from developing countries. It therefore invited the Commission to try to schedule its calendar of meetings in such a way as to ensure progress in the consideration of topics taking into account the difficulties of participation by such members. Lastly, he reiterated the importance of the Commission's activities in the field of training and technical assistance, the key elements of which were the organization of seminars and symposia, expressed appreciation for the contributions made by various States to the programme of seminars and to the Trust Fund for travel assistance to developing countries that were members of the Commission and requested that the effort should be continued to provide the secretariat with more human and financial resources.

32. **Mr. Singh** (India) said that his delegation welcomed the adoption of the draft Convention on the Assignment of Receivables in International Trade, since the adoption of uniform rules in that area would increase certainty and transparency in the legal regime and promote the availability of capital and credit at affordable rates, thus facilitating the development of international trade. His delegation supported the recommendation that the General Assembly should adopt it as a convention. The Model Law on Electronic Signatures and the Guide to Enactment would assist States in promoting electronic commerce through the regulation of the use of modern authentication techniques and the harmonization of the laws on those matters. Electronic means of communication and storage and transmission of data were constantly increasing, and that law would thus be a useful supplement to the Model Law on Electronic Commerce adopted in 1996. India had recently promulgated an Information Technology Act (Act 21 of 2001), which was based on the model law on electronic commerce and would facilitate electronic commerce by making it possible to conclude contracts and create rights and obligations through the electronic medium. The Act also provided for the establishment of a regulatory regime to supervise the work of the certifying authorities issuing digital signature certificates and to prevent their possible misuse.

33. India was pleased to note that the Commission, when identifying issues for consideration in the areas of transport law, insolvency law, security interests and privately financed infrastructure projects, had taken into account the work being done by other concerned organizations, such as the International Maritime Committee (CMI), the International Monetary Fund, the World Bank, the Asian Development Bank, the International Federation of Insolvency Professionals (INSOL) and the International Bar Association. It also supported the Commission's recommendation that its membership should be increased from 36 to 72, while maintaining respect for the principle of equitable geographical distribution, since more States would be able to participate in its work and it would better reflect all legal and economic systems, which would enhance its efficiency. The work carried out by the Commission in the area of training and technical assistance was also important, as was the system for the collection and dissemination of case law on UNCITRAL texts (CLOUT), which was a most valuable instrument for trade law research and its uniform application and interpretation. In that regard and considering the importance of trade law unification for economic development, the extent to which the mandate and workload of the Commission had increased and the need to provide conference services to a larger number of working groups, in addition to the editing and publishing of the increasing case law, the secretariat should be provided with the necessary financial and human resources to continue its work.

34. **Ms. Miller** (Sweden), speaking on behalf of the Nordic countries, highlighted the fundamental importance of the Commission's role in drafting international trade laws, in view of the rapid globalization of the economic environment. The Nordic countries welcomed the completion of the draft Convention on Assignment of Receivables in International Trade and the draft UNCITRAL Model Law on Electronic Signatures, which together would serve to establish basic principles and facilitate the development of international trade. The increase in the membership of the Commission could stimulate interest in its work and ensure that the draft texts would be acceptable to all States. Pursuant to the report of the Secretary-General, the increase in the number of members from 36 to 72 would have no financial implications for the work of the Commission secretariat, nor diminish its effectiveness; the Nordic countries therefore supported the proposal, while

noting that the issue of financing the participation of members from developing countries remained to be resolved. With regard to the change in the Commission's working methods, it was essential to provide the UNCITRAL secretariat with adequate resources, as from then on it would need to handle six projects at the same time.

35. **Mr. Florent** (France) said it was regrettable that the draft Convention on Assignment of Receivables in International Trade did not pay special attention to bank branches; his delegation would support any initiative aimed at delinking the rules applicable to bank branches from those applicable to central banks, since the branch rules were largely subordinate to local legislation and had repercussions on the refinancing of central banks. Nevertheless, his Government would not oppose the adoption of the instrument by the General Assembly. With regard to the work programme of the Commission, the rules concerning the official and working languages of the United Nations must be observed; otherwise, the preparation, development and quality of the Commission's texts would be jeopardized, since many delegations would lack sufficient time to consider certain drafts and take a position on them. The lack of resources in the French Translation Service, combined with the change in 2001 in the timetable of the Working Group on insolvency law, whose session had practically coincided with that of the Commission, had led to delays in the issuance of preparatory documents in French, and could diminish the quality of the Commission's work. In that connection, the translators working on preparatory documents should be the ones participating in the drafting committee, so as to ensure the uniformity and quality of the documentation. With regard to the expansion of the Commission, France was in favour of maintaining a balance among the regional groups. With regard to future work, it would be helpful to establish certain priorities in order to avoid multiplying the number of working groups, which would have consequences for States and for the Secretariat, in terms of human and budgetary resources, and would create tensions.

36. **Mr. Su** Wei (China) said that the Commission's work programme and timetable should be organized more rationally. At the most recent session of the Commission there had been 23 items on the agenda; nevertheless, most of the time had been spent on the draft Convention on Assignment of Receivables in International Trade and the draft UNCITRAL Model Law on Electronic Signatures and draft Guide to Enactment, which had already been discussed a number of times and agreed on by UNCITRAL, thus leaving little time for other items on the agenda. China hoped that such problems could be avoided in the future.

37. Moreover, among the members of UNCITRAL, which included both developed and developing countries, there were great differences with regard to basic conditions and legislation; it was therefore necessary to strengthen the technical assistance and training provided to developing countries so as to enable them to participate effectively in the work of the Commission.

38. The conventions and model laws adopted under the auspices of UNCITRAL had played an outstanding role in international trade. Further efforts must be made to maximize that role. In that regard, it was important to ensure that those conventions and model laws were endorsed and accepted by more countries, an effort that required the collaboration of all States. It also required that the Commission, in elaborating legal instruments, should make more efforts to assimilate diverse views, take into account the circumstances of different countries and publicize and disseminate those instruments more widely. His Government believed that the work of UNCITRAL should continue to be supported by the General Assembly, which would enable it to make further progress in the fulfilment of its mandate.

39. **Mr. Vámos-Goldman** (Canada) said that his delegation had been very supportive of the Commission's work in preparing a Convention on the assignment of receivables in international trade and was very satisfied with the result. The Convention provided a set of rules that were fair and reasonable and that should enhance legal certainty in the field and contribute to the availability of lower-cost credit in international commerce. His delegation encouraged the General Assembly to adopt a resolution opening the Convention for signature without changes and to invite States to become parties to it.

40. Canada strongly supported the adoption of the Model Law on Electronic Signatures; it had already implemented some of its key elements. Electronic commerce legislation which had recently been adopted in Canada had provided a basis in law for the recognition of electronic signatures and the evaluation

of the degree of reliability of signature technologies. Moreover, it acknowledged the authority of Governments to specify a particular signature technology that was considered to comply with a specified level of reliability in fulfilling the legal requirements of signature. His delegation would encourage the General Assembly to adopt a resolution noting the achievement of the Commission in the Model Law and inviting States to adopt legislation based on it.

41. As for the Commission's current and future work in the areas of arbitration, electronic commerce, privately financed infrastructure projects, insolvency law, secured interests and transport law, his delegation considered that it would be of great value; it intended to continue its participation in those projects and encouraged other States to do so as well, in order to ensure that their needs and interests were reflected in the final products.

42. His delegation noted that the number of projects on which the Commission was working had significantly increased. Since that might well impose greater demands on the resources of the Secretariat, it invited States to support efforts to ensure that the Secretariat had adequate resources to respond to the programmes set by Member States.

43. The most important point to come out of the thirty-fourth session of UNCITRAL was the recommendation that the membership of the Commission should be enlarged; that was a recommendation which his delegation strongly supported. He noted that there were States that were not able to participate in the work of the Commission because it might be difficult to justify the expense entailed when they were not members. The participation of those States could make a valuable contribution to the work of the Commission, as it would ensure that a broader range of perspectives was taken into account in the development of UNCITRAL instruments and the States in question might adopt them more easily. A larger Commission would mean more opportunities for those States to be elected and, consequently, to be able to justify their attendance. The work of UNCITRAL would then be even more representative. His delegation considered that an increase in the membership would substantially assist the Commission in carrying out its mandate, give it greater visibility in the United Nations system and give a greater profile to its products. The increase would reduce the difference in size between the Commission and other United Nations and non-United Nations bodies in related fields, and facilitate coordination among them; reflect the increased importance of international trade law in the twenty-first century; and reflect the increased number of States Members of the United Nations since the previous increase in 1973. It would also permit the Commission to maintain its working methods, including the adoption of decisions by consensus. Taking all that into account, his delegation supported the Commission's recommendation that the number of members should be increased to 72. To the extent that the sessions of the Commission and the Working Group already accommodated far more than 36 States, the increase would not have any financial implications. His delegation also supported the recommendation that the current proportion between the regional groups should be maintained, and considered that, if the recommendation was accepted, it was important that it should be implemented as soon as possible. The members of the Commission were currently divided into one group of 19 and another group of 17, with elections held every three years. The next election, for the group of 19, would be held in 2004. In his delegation's opinion, the election of the new members should be held as soon as possible and in any event before the autumn of 2004. He also suggested that the new division of members should be such as to maintain the balance and overlap that existed between the two groups and their respective terms. He invited other States to support his proposal and said he looked forward to working with a greater number of them within the Commission.

The meeting rose at 12.10 p.m.

United Nations A/C.6/56/SR.3

General Assembly
Fifty-sixth session

Official Records

Distr.: General
16 October 2001

Original: English

Sixth Committee

Summary record of the 3rd meeting
Held at Headquarters, New York, on Monday, 8 October 2001, at 3 p.m.

Chairman: Mr. Lelong ..... (Haiti)

Contents

Agenda item 161: Report of the United Nations Commission on International Trade Law on the work of its thirty-fourth session (*continued*)

This record is subject to correction. Corrections should be sent under the signature of a member of the delegation concerned *within one week of the date of publication* to the Chief of the Official Records Editing Section, room DC2-750, 2 United Nations Plaza, and incorporated in a copy of the record.

Corrections will be issued after the end of the session, in a separate corrigendum for each Committee.

01-56879 (E)

The meeting was called to order at 3.05 p.m.

Agenda item 161: Report of the United Nations Commission on International Trade Law on the work of its thirty-fourth session (*continued*) (A/56/17)

1. **Mr. Popkov** (Belarus) said he welcomed the outcome of the thirty-fourth session of the United Nations Commission on International Trade Law (UNCITRAL). His country was making strenuous efforts to expand its foreign trade, and consequently attached great importance to the unification of the principles and norms governing international trade; it had therefore acceded to four conventions drawn up by the Commission. UNCITRAL model laws constituted a valuable source of information about generally acceptable international standards and had served as a reference point for new and better legislation in Belarus.

2. It might be possible to adopt at the current session of the General Assembly the text of the draft Convention on the Assignment of Receivables in International Trade, which would help to eliminate loopholes in regulations on commercial relations. In Belarus many aspects of the assignment of receivables were covered by the new Civil Code, which had come into force in 1999. The Code provided for two institutions of contract law, transfer of the rights of the assignor and financing on assignment of pecuniary claims, which had been based on principles contained in the draft Convention.

3. He also welcomed the adoption of the draft Model Law on Electronic Signatures and encouraged the Commission to pursue its study of issues related to electronic commerce, the latter having become the usual form of trading for an overwhelming number of firms throughout the world. In Belarus, in January 2000, a law on electronic documents had been adopted which laid the legal foundations for the use of such documents and of electronic signatures for concluding commercial transactions. His delegation was convinced that the UNCITRAL Model Law constituted a strong basis for the progressive development of legislation on electronic commerce in Belarus and other States with economies in transition.

4. With regard to the question of commercial arbitration, which had been considered by the Working Group on Arbitration, his delegation supported the interpretation given of article II, paragraph 2, of the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. Technical changes in the way in which international trade was conducted had led to new methods of concluding commercial contracts and that, in turn, had been reflected in arbitral agreements which did not fully satisfy the requirements of a written agreement. Hence, a unified approach to the interpretation of the provisions of the Convention, which would take account of the changes, was most necessary. The adoption of a declaration recommending that States parties to the New York Convention should interpret article II, paragraph 2, broadly, would be the best remedy at the moment, since not all States recognized the need for such a wide interpretation. Amendments to the New York Convention should likewise be considered.

5. He commended the Commission's efforts to prepare a legislative guide on insolvency. The results of the Working Group's examination of cases of insolvency and the consequences of bringing such cases gave grounds for hope that work would soon be completed on a draft guide which would play a useful role in the unification of States' laws on that subject. The guide would show legislators that an attempt had been made to balance social, economic and legal considerations. In Belarus in the year 2000 a new bankruptcy law had been passed, which had drawn on the experience of other States with more detailed regulations on the matter. Any model legislation drafted by the Commission could help Belarus to improve its insolvency laws.

6. He welcomed the initiative taken with a view to identifying areas of transport law where more uniform rules were required. The Commission's investigation of the influence of modern technologies on the legal rules governing the international carriage of goods by sea was forward-looking and laudable. The most pressing issue was the carriage of goods by means other than by sea, since no international treaty existed on that subject and a special UNCITRAL convention on that matter would therefore be a valuable contribution to international transport law.

7. His delegation supported the provision of General Assembly resolution 55/151 concerning a possible increase in the Commission's membership, but considered that any such increase should be relatively small in order to maintain the Commission's efficiency. Lastly, he urged the Commission to disseminate

information about the texts formulated under its auspices through seminars and symposiums.

8. **Ms. Long** (Singapore) observed that expanding commercial relations and new technologies were making the deliberations of the Commission increasingly important. Singapore remained committed to the goal of harmonizing international laws on international trade and was therefore pleased that, at the thirty-fourth session, the Commission had completed the drafting of a Convention on the Assignment of Receivables in International Trade, which would promote the flow of international trade by boosting the availability of credit at a lower cost.

9. Similarly, her country welcomed the draft Model Law on Electronic Signatures and the draft Guide to Enactment, since the Model Law maintained a balance between the interests of signatories, certification service providers and relying parties. The text would greatly help States in their endeavours to prepare or modernize legislation on electronic commerce.

10. Singapore was pleased that the Commission had given the Working Group the mandate to draw up a legislative guide to implementing insolvency law, since that would allow the Working Group great flexibility. The guide should not, however, be too general or abstract and, for that reason, it should include legislative provisions.

11. Singapore regarded the training and assistance provided by the Commission in order to promote uniform legal texts as important and was proud that it had been able to assist in that field in the past and would also be doing so in the future. It supported the continued operation of the system for the collection and dissemination of Case law on UNCITRAL texts (CLOUT), which was a valuable tool for international trade research into recent developments around the world.

12. Singapore supported the recommendation that the Commission's membership should be increased and believed that it was important to make sure the Commission had the requisite financial and personnel resources to continue its important work.

13. **Mr. Marschik** (Austria) said his delegation regretted that the UNCITRAL secretariat's resources were still too small in relation to its large mandate, but was pleased that proposals aimed at alleviating the secretariat's burden had been supported by the Advisory Committee on Administrative and Budgetary Questions; it was to be hoped that the General Assembly would ensure that the additional resources were provided.

14. The draft Convention on the Assignment of Receivables in International Trade met some urgent needs, since the assignment of receivables was an important means of making capital and credit available. Obstacles stemming from a confused legal situation and the divergence of national laws would have to be removed in order to create legal certainty in a complicated situation involving at least three parties. Since the Commission had had to contend with a multiplicity of legal issues and systems, the Convention was complex and therefore deserved close scrutiny. Nevertheless his delegation was convinced that once the Convention came into force and was implemented, it would provide a sound basis for international assignments of receivables and would prove to be a major achievement.

15. He observed that, while international trade was more than ready to take advantage of new technologies like the Internet and electronic communications, the crucial problem was legal certainty. By drafting a Model Law on Electronic Signatures, the Commission was fostering an internationally harmonized development of law, which would be of value to international trade. Austria had already implemented the European Union's Directive 1999/93/EC, of 13 December 1999, on a Community framework for electronic signatures, which contained several features also found in the Model Law.

16. Austria congratulated the Commission secretariat on organizing a Colloquium on Privately Financed Infrastructure in Vienna in July and endorsed the initiative to establish a Working Group to draft a core model law, because a legislative and regulatory framework for infrastructure projects would send a reassuring signal to all potential private investors and might help to attract private investment for infrastructure projects in developing States.

17. He encouraged the Commission to intensify its cooperation with organizations active in the fields of the settlement of commercial disputes, electronic commerce, insolvency law, transport law and security interests in order to avoid duplication of effort.

18. He praised the secretariat for its role in promoting awareness of the Commission's work, especially the

time-consuming collation of case law in CLOUT, and in arranging training and technical assistance seminars. The Willem C. Vis International Commercial Arbitration Moot held in Vienna in April had been an excellent means of heightening young people's awareness of international trade law.

19. He praised the Commission's success in reforming and streamlining its working methods and saw merit in enlarging the Commission to between 60 and 72 members. His country looked forward to playing an active part in the Commission's future work.

20. **Ms. Burnett** (United Kingdom) said her country was glad that a draft Convention on the Assignment of Receivables in International Trade had been approved at the thirty-fourth session, since it was a significant instrument which would enable business and lenders to reach funding agreements to the benefit of world trade. The Model Law on Electronic Signatures was also a significant piece of model legislation in an area of activity of increasing importance to all areas of commerce. Her delegation hoped that work on that subject would retain its direction and that the Working Group would proceed in a measured manner.

21. As a sound insolvency regime clearly bolstered confidence in markets, the United Kingdom had been happy to participate in the studies of the Working Group, but agreed with the conclusions of the Global Insolvency Colloquium, held in December 2000, that a model law on insolvency would not be conducive to the flexibility needed in that sphere. While the work on arbitration was moving in the right direction, the United Kingdom was similarly concerned that a model law on conciliation should not constrain or regulate too tightly a process where the main advantage was flexibility and informality.

22. The United Kingdom welcomed the inclusion of transport law in the Commission's work programme, but the fact that a whole day had been spent on discussing future possible work illustrated the potential complexity of the subject matter. For that reason, the United Kingdom urged the Commission to maintain a focused approach to studies in that area.

23. Reform of the law on security interests was an ambitious project and since it was a field where several other international organizations were active, the Commission should liaise closely with them in order to avoid duplication of effort.

24. The United Kingdom supported the proposal to increase the Commission's membership, so long as a regional balance was maintained. It had some misgivings about the increase in the Commission's workload, notwithstanding the new working methods that had been introduced. It therefore held that the key to success was the setting of priorities in order to make the best possible use of the shorter time available for each Working Group. The United Kingdom would play its part in ensuring that that time was employed productively and effectively.

25. **Mr. Fomba** (Mali) said that, although Mali was not a member of the Commission, his delegation nevertheless considered its work highly important, particularly for developing countries. It welcomed the completion of two significant instruments, the draft Convention on the Assignment of Receivables in International Trade and the UNCITRAL Model Law on Electronic Signatures and Guide to Enactment of the Model Law. It supported the Commission's recommendation to the General Assembly that it should consider the draft Convention with a view to concluding a United Nations convention on the subject at its current session. It also commended the Commission's decision to request wide dissemination of the Model Law and Guide and to recommend that all States give favourable consideration to it and to the UNCITRAL Model Law on Electronic Commerce when enacting domestic legislation.

26. With regard to privately financed infrastructure projects, his delegation concurred with the Commission's decision to entrust a working group with the task of drafting core model legislative provisions in the field of privately financed infrastructure projects. On the issue of the enlargement of the membership of the Commission, his delegation supported the proposal to increase the number of member States from 36 to 72, maintaining the current proportion between the regional groups. Lastly, it stressed the importance of training and technical assistance for developing countries and urged an appreciable increase in financial resources.

27. **Mr. Jalang'o** (Kenya) said that the draft Convention on the Assignment of Receivables in International Trade completed by the Commission at its thirty-fourth session could significantly facilitate receivables financing, thus increasing the availability of credit at a more affordable cost, to the benefit of both business and consumers. His delegation hoped to

see it adopted as a United Nations convention and opened for signature. It also welcomed the completion of the UNCITRAL Model Law on Electronic Signatures and supported the Commission's request that the Model Law and related Guide to Enactment should be transmitted to Governments for use in enacting their legislation.

28. Countries had benefited greatly from the training and assistance activities and seminars conducted by the Commission. Such assistance had enabled Kenya, for example, to incorporate UNCITRAL texts into its government procurement rules and arbitration laws. Unfortunately, financing constraints were keeping the Commission from meeting the demands of Member States and hampering the accomplishment of its core function of harmonizing and unifying international trade law. In addition to urging States and organizations to contribute to the UNCITRAL trust funds, the General Assembly should consider increasing the resources available to the Commission for training and assistance. Moreover, ways should be found, perhaps by adjusting the terms of reference of certain trust funds, to provide assistance to enable delegates from developing countries to attend UNCITRAL meetings.

29. Additional resources would also be needed to enable the Commission to tackle its increased workload, entailing three new working groups on insolvency law, transport law and security interests. His delegation supported the suggestion that each working group should be entrusted with two different topics during its session or that two working groups should share the same two-week meeting period, one session being held in the first week and the other during the second week, since those arrangements would lessen the burden on delegations that had difficulties attending the meetings and on the secretariat in servicing them.

30. His delegation was in favour of doubling the Commission's membership to 72 and did not believe that the number would undermine efficiency or increase the meetings servicing costs. The increase would enlarge the pool of experts available to the Commission, enable more delegations to justify their attendance at UNCITRAL meetings and make the Commission more representative of the membership of the Organization.

31. **Mr. Jacovides** (Cyprus) said that the Commission's report on its thirty-fourth session (A/56/17) was up to its usual high standards. The sheer number of topics dealt with, in addition to the two valuable texts completed on assignment of receivables and electronic signatures, demonstrated that the Commission's workload had been heavy in substance. His delegation particularly welcomed the comprehensive statement of key objectives in relation to insolvency law and the appropriate emphasis accorded to conciliation in the settlement of commercial disputes. It fully approved of the Commission's work on privately financed infrastructure projects, a matter of particular interest to developing countries, and on the uniform interpretation and application of international trade law conventions and uniform laws.

32. Cognizant of the need to ensure the active participation of the broadest possible number of countries, his delegation supported the proposed enlargement of the membership of the Commission and was keeping an open mind as to the number of members. Although doubling the membership would make it easy to maintain the current pattern of representation, it might also hamper efficiency. What was of prime importance was that the Commission should be representative of all legal and economic systems. The proposal of Canada for proceeding with the enlargement deserved careful consideration and support.

33. His delegation found the reasons presented for an increase in the human and financial resources available to the Commission persuasive. Cyprus, which had been in the vanguard of the initiative to create UNCITRAL, valued the Commission's role in harmonizing international trade law and particularly appreciated its work in the areas of training and technical assistance.

34. **Mr. Ascenio** (Mexico) said that his delegation fully concurred with the statement of the Rio Group on the agenda item. With regard to enlargement of the membership of the Commission, his delegation believed that 60 was the optimum number of members, because it would ensure the representative nature of the Commission without impairing its efficiency.

The meeting rose at 4.05 p.m.

United Nations A/C.6/56/SR.4

General Assembly
Fifty-sixth session

Official Records

Distr.: General
21 December 2001
English
Original: Spanish

Sixth Committee

Summary record of the 4th meeting
Held at Headquarters, New York, on Tuesday, 9 October 2001, at 10 a.m.

Chairman: Mr. Lelong ..... (Haiti)

Contents

Agenda item 161: Report of the United Nations Commission on International Trade Law on the work of its thirty-fourth session (*continued*)

Agenda item 167: Scope of legal protection under the Convention on the Safety of United Nations and Associated Personnel (*continued*)

This record is subject to correction. Corrections should be sent under the signature of a member of the delegation concerned *within one week of the date of publication* to the Chief of the Official Records Editing Section, room DC2-750, 2 United Nations Plaza, and incorporated in a copy of the record.

Corrections will be issued after the end of the session, in a separate corrigendum for each Committee.

01-57169 (E)

The meeting was called to order at 10.10 a.m.

Agenda item 161: Report of the United Nations Commission on International Trade Law on the work of its thirty-fourth session (*continued*) (A/56/17)

1. **Mr. Bliss** (Australia) said that his delegation supported the adoption by the General Assembly of the draft Convention on Assignment of Receivables in International Trade, welcomed the new work programme undertaken by the United Nations Commission on International Trade Law (UNCITRAL), and looked forward to active participation in that work as an observer State. Australia also looked forward to the completion of the work that was being carried out on commercial dispute settlement through arbitration and the enforcement of interim measures of protection. His delegation would welcome the submission of draft legislative provisions on conciliation to the thirty-fifth session of UNCITRAL.

2. Australia also supported the new working methods approved at the thirty-fourth session, consisting of holding week-long working group meetings. The new arrangements would make it possible to reduce travel costs, a matter of some importance to Australia because of its distance from Vienna and New York. His Government supported the enlargement of UNCITRAL to 72 States Members of the United Nations, in lieu of the current 36, as that would maintain the current regional distribution. Moreover, recent sessions of the Commission had been attended by more than 77 Member States, and greater participation by States in the work of the Commission would enhance its status and promote its work more widely in the international community. That would be of benefit to international trade and would promote economic prosperity. Australia looked forward to the possibility of working within an enlarged Commission in the near future.

3. **Mr. Akamatsu** (Japan) expressed his deep appreciation for the contribution made by UNCITRAL in promoting the progressive harmonization and unification of international trade law; in particular, his delegation commended the secretariat and the members of the Commission for their efforts to conclude the draft Convention on Assignment of Receivables in International Trade. Japan fully endorsed the decision and recommendation of the Commission, as contained in paragraph 200 of its report (A/56/17), and hoped that the General Assembly would adopt the draft Convention at the current session. It also welcomed the completion of the draft UNCITRAL Model Law on Electronic Signatures. Japan was contributing to the unification of domestic law in that area, since it had enacted and implemented a law on electronic signatures which was consonant with the UNCITRAL Model Law. With regard to insolvency law, since harmonization of the legislation of various countries was very important, his delegation considered it appropriate for the Commission to formulate guidelines in that area in order to meet that need. In so doing, the Commission should take into account the fact that each country had its own domestic regime and that regimes varied substantially from one country to the next. With regard to international commercial arbitration, he noted with satisfaction the progress made by the Working Group on Arbitration in its consideration of the issue, and he hoped that the Commission would further examine international trade laws and practices in that field.

4. With regard to the working methods of the Commission, while his delegation welcomed the efforts made to improve the efficiency of the Commission's work, it noted with concern that the doubling of the number of topics would impose excessive burdens on the resources of the Secretariat and of Member States. Accordingly, Japan requested the Commission to be careful in setting priorities among the topics and to restrict the number of topics. Lastly, Japan endorsed the recommendation of the Commission concerning the enlargement of its membership, and recognized that doubling the membership would help to maintain a balance among regional groups. Japan trusted that doing so would facilitate the work of the Commission and further enhance the development of international trade law in accordance with actual needs.

5. **Mr. Yengejeh** (Islamic Republic of Iran) reaffirmed his delegation's support of the Commission and its mandate; it was gratifying to note that the Commission had finalized the draft Convention on Assignment of Receivables in International Trade. The adoption of the Convention would greatly facilitate the transfer of receivables and, consequently, would improve the availability of credit at more affordable rates, an essential factor for trade expansion. With regard to chapter IV of the report of the Commission, his delegation endorsed the Commission's

recommendation that the draft Model Law and the related Guide should be adopted at the current session of the General Assembly and be transmitted subsequently to Governments for any necessary action.

6. He welcomed the timely recommendation to the General Assembly that the membership of the Commission be increased from 36 to 72, in view of the increase in the general membership of the United Nations and in response to the desire of many States for active participation in the activities of the Commission. Moreover, the increase in the membership of the Commission would have no financial implications. In the allocation of seats to regional groups, however, the principles of equitable geographical distribution and representation of the major legal systems should be respected. In connection with chapter XIII of the report, he reiterated the concerns expressed by several members of the Commission regarding the possible consequences of the new working methods. It was true that not all members of the Commission would be in a position to provide resources for participation in the Commission's work on six different projects at the same time. Moreover, it was questionable whether the secretariat could, with existing means, service six projects at the same time, a situation that might delay the completion of UNCITRAL projects.

7. The delegation of the Islamic Republic of Iran was concerned about the decreased participation of developing countries in the work of the Commission. It hoped that with the enlargement of the Commission's membership, paragraphs 7 to 10 of General Assembly resolution 55/151 would be effectively implemented. Lastly, he expressed his support for the Commission's recommendation to the General Assembly, contained in paragraph 403 of the report, requesting the Secretary-General to increase the human and financial resources of the UNCITRAL secretariat.

8. **Mr. Ekedede** (Nigeria) said that the UNCITRAL Legislative Guide on Privately Financed Infrastructure Projects was a useful reference for policy makers in developing countries, in terms of establishing a legal framework favourable to private investment in public infrastructure works, while at the same time permitting the reallocation of resources to more pressing social needs. Consequently, his Government had established a special legal regime that encouraged foreign investment. In the area of electronic commerce, Nigeria supported the Commission's decision to prepare uniform rules on the legal issues of electronic signatures. It was still difficult, however, to reach a common understanding of the new legal issues arising from the increased use of electronic signatures and to achieve consensus on the manner of addressing those issues in an internationally acceptable legal framework. In some countries, predominantly developing countries, there was considerable uncertainty regarding the validity of contracts concluded by electronic means. Such uncertainties might have arisen from the fact that in certain cases, messages were generated by computers without direct human intervention, thus raising doubts as to the intent of the parties. His delegation therefore held that electronic commerce must not interfere with the law of contract, but must rather promote international trade by providing increased legal certainty in the conclusion of contracts by electronic means.

9. Nigeria would continue to support the Commission's work relating to insolvency, and his delegation noted with satisfaction the mandate given to the relevant Working Group. The Asian financial crisis had pointed up the need for a strong insolvency regime and for harmonization of the insolvency laws of various countries. His delegation subscribed to the view that such regimes were an important means of preventing or limiting financial crises and facilitating rapid recovery from severe indebtedness. A model law would be of great value to developing countries, for it would foster the adoption of effective insolvency regimes. His delegation commended the Secretariat for its work of collecting and disseminating case law on UNCITRAL texts (CLOUT) and for its training and technical assistance activities, which were very useful to developing countries that lacked expertise in that area. Concerning the increase in the membership of the Commission, his delegation agreed with the views expressed by the Secretariat and some Member States that, since there would be no financial implications for the United Nations, an increase in membership would promote the representative character of the Commission.

10. **Mr. Hwang** Cheol-kyu (Republic of Korea) said that in view of the great increase in international trade, in both scale and quality, a pragmatic, universal legal modality had become indispensable. Moreover, the globalization and liberalization of the world economy had given rise to remarkable changes in international trade, so that the size of the Commission was no longer adequate. The Republic of Korea was rapidly

approaching the status of the tenth largest trading nation in the world and held a keen interest in the further development and implementation of laws in that respect. To that end, it wished to make a greater contribution to the work of the Commission and therefore supported the expansion of the membership to at least 60 States, including the countries which regularly participated in the work of the Commission and its working groups; one of the major considerations should be the importance of the country concerned in international trade.

11. The Republic of Korea believed that the draft Convention on Assignment of Receivables in International Trade and the draft Model Law on Electronic Signatures would serve as a very useful reference point for domestic legislators in establishing a legal framework and would facilitate efficient and expeditious transactions. The legislative guide on insolvency would encourage the adoption at the national level of effective and cooperative regimes on that question, but the working group should bear in mind that the guide would be the result of negotiations among States with a diversity of traditions and administrative practices. It would also be necessary to respect and reflect the various legal systems during the deliberations on the settlement of disputes. Lastly, his delegation welcomed the progress made in respect of the requirement of written form for arbitration agreements, interim measures of protection and the preparation of a model law on conciliation.

12. **Mr. Hybl** (United States of America) said that the harmonization of commercial law brought advantages to all States, whatever their level of economic development. The Convention on Assignment of Receivables in International Trade would open up commercial credit in all regions through the adoption of modern finance law as an international standard; his Government would support the adoption of the Convention by the General Assembly so that it could be opened for signature and ratification without delay. The Convention was long overdue and would enable developing and emerging States to obtain credit from private sector capital markets. It would also encourage the use of modern concepts of secured finance, based on assignments of rights to payments, including future rights, and would allow States to draw on large but often unused reservoirs of collateral derived from moveable goods. World financial institutions supported that goal and mechanism. The Convention included optional provisions on priority rules allowing the establishment of an international, computer-based registry system which would be the key to granting new commercial credits to many States. His delegation would welcome discussions with other States as to the means of establishing such a registry system. The Model Law on Electronic Signatures could encourage the adoption of standards that would be difficult to implement in many commercial transactions. Nonetheless, countries which had not yet adopted law on that subject could use it, with modifications, as a starting point. States with regulatory regimes which limited the use of electronic signatures should consider the approach of the Model Law, which struck a balance between standardization and regulation.

13. Following the completion of the Legislative Guide on Privately Financed Infrastructure Projects, the Commission had established a new working group to prepare more detailed guidance and model provisions for States. That working group should help developing and emerging States by encouraging openness of capital markets in support of the necessary infrastructure development.

14. As part of its efforts to promote the rule of law, which was essential to achieving progress worldwide, the Commission was tackling issues which arose when there were conflicting national regulatory regimes. An example was the joint approval with the International Maritime Committee and other bodies of a document on the carriage of goods by sea. The Commission also supported the Secretariat and national correspondents in upgrading their relevancy and utility and encouraged international harmonization through expanded analysis and recommendations on the implementation of UNCITRAL texts by States and by disseminating its decisions in all the official languages of the United Nations (the CLOUT system).

15. One aspect which remained important was coordination with other bodies concerned with private law. Recently the Commission had decided to prepare a model law on the financing of commercial goods, thereby recognizing the work of the Hague Conference and the International Institute for the Unification of Private Law (UNIDROIT), as well as the work of UNIDROIT on the financing of equipment. It was to be hoped that the work on the carriage of goods by sea would take into account related projects in regional bodies such as the Economic Commission for Europe and the Organization of American States.

16. As to the question of the enlargement of the membership of the Commission, that would enable all regions to participate, and his delegation hoped that consensus would be achieved after careful consideration of the proposals. It also welcomed the initiatives of the Commission to test new work methods, such as reducing the length of working group meetings, which would enable the Commission, subject to the availability of resources, to undertake new projects, which could have substantial importance for a globalized economy.

17. **Mr. Thayeb** (Indonesia) emphasized the role of UNCITRAL in harmonizing and codifying international trade law, in view of the rapid pace of globalization, and noted with satisfaction the Commission's recommendation to the General Assembly that it should adopt the draft Convention on Assignment of Receivables in International Trade; there was a need to ensure the availability of credit at more affordable rates in order to enhance international trade for the benefit of consumers of goods and services, as well as retailers and wholesalers. In addition, the draft UNCITRAL Model Law on Electronic Signatures and the draft Guide to Enactment would assist States in updating and revising their laws and ensure uniformity of the laws concerning paper-based forms of communication, storage and authentication of information. In that connection, his delegation supported the future work of the Working Group regarding the possibility of elaborating an international convention based on the relevant provisions of the Model Law. In the area of insolvency law, the Working Group's mandate of adopting a flexible approach was relevant to the needs of States and would present them with options for updating and reviewing national laws. In that context, it would be useful for the Working Group to take into account the work undertaken by the Asian Development Bank, the International Monetary Fund (IMF) and the World Bank in order to avoid duplication of efforts. The collection and dissemination of case law on UNCITRAL texts (CLOUT) would be of great benefit to many countries, as it promoted the uniform interpretation and application of UNCITRAL texts and conventions. Indonesia concurred with the proposal to prepare a digest of court and arbitration cases which could assist in providing guidance, although it should be limited to the international level and should avoid criticizing the decisions of national courts.

18. Having participated actively as an observer in the Commission's deliberations, Indonesia welcomed the recommendation to increase the membership of the Commission based on the principle of equitable geographical representation; such an expansion would make the Commission more representative of all the economic systems peculiar to the Members of the United Nations. Lastly, his delegation emphasized the importance of providing training and technical assistance to developing countries, and would appreciate any such assistance concerning UNCITRAL texts. In an increasingly globalized environment, it was essential to promote the participation of developing countries and to ensure an equitable distribution of the benefits of globalization, in keeping with the Commission's mandate.

19. **Mr. Kanu** (Sierra Leone) questioned the extent to which the draft Convention on Assignment of Receivables in International Trade would benefit developing countries, which encountered huge difficulties in obtaining access to credit and, where credit was available, were forced to put up with crippling interest rates. It was to be hoped that in the area of security interest, unnecessary obstacles to credit would be eliminated for all developing countries and countries with economies in transition. It would appear that those issues had been addressed; for that reason, his delegation generally supported the adoption of the Convention by the General Assembly. With regard to the draft UNCITRAL Model Law on Electronic Signatures and the draft Guide to Enactment, there were various legal systems in the world, and it would therefore be appropriate to know the extent to which the draft Model Law had been used by States as a basis for their electronic commerce legislation; for its part, his Government was preparing a draft bill based on the letter and spirit of the Model Law.

20. With regard to the Commission's future work on electronic commerce, his delegation agreed with the Chilean delegation that a broad approach should be adopted in dealing with issues relating to electronic transactions, especially the ratione materiae of the United Nations Convention on Contracts for the International Sale of Goods. The question arose whether the Convention was interpreted uniformly in different jurisdictions, particularly the articles on exclusion and interest rates. His delegation noted with satisfaction that the Commission had decided to begin work in new areas, such as transport law, insolvency law and privately financed infrastructure projects. On

the other hand, the Commission might not have taken into account in its deliberations private attempts to set up dispute settlement mechanisms within the electronic commerce framework. Like the delegations of China and the United Kingdom, Sierra Leone believed that the Commission's work plan should be arranged in such a way as to yield maximum benefits, and that its agenda should reflect its ability to deal with issues in depth and avoid duplication. Lastly, his delegation supported the enlargement of the membership of the Commission, bearing in mind the principle of equitable geographical representation and paragraphs 8 to 10 of General Assembly resolution 55/151, concerning the provision of technical and travel assistance to representatives of developing countries and least developed countries. In that regard, he expressed thanks to all States which had made contributions to the Trust Fund for that purpose.

21. **Mr. Medrek** (Morocco) said that a convention on the assignment of receivables in international trade would doubtless help to expand international trade, by facilitating financing and increasing the supply of credit at more accessible rates of interest, thereby benefiting producers, wholesalers and retailers and consumers of goods and services. His delegation therefore had no objection to the General Assembly adopting the instrument in its current form and opening it for signature. It also fully supported the Model Law on Electronic Signatures, which provided practical systems for authenticating electronic signatures based on a standard legal framework that would reduce uncertainty at the international level concerning the new authentication techniques. He also supported the recommendations of the Working Group with regard to future work and urged the Commission to prepare an international instrument on matters relating to electronic contracting without delay, consider appropriate means of removing legal obstacles to electronic commerce in international instruments and carry out a study of the issues related to transfer of rights, in particular rights in tangible goods, by electronic means and mechanisms for publicizing and keeping a record of acts of transfer or the creation of security interests in such goods.

22. On 23 and 24 April 2001, his Government, under the aegis of H.M. King Mohammed VI, had held a national symposium on Morocco's entry into the global information society. All participants had contributed to the implementation of a national strategy for the development of new information and communications technologies. In addition, a law on those technologies, largely based on the Commission's Model Law on Electronic Commerce, had recently been developed. With regard to an enlargement of the membership of the Commission, his delegation reiterated its support for an increase that would ensure greater representation of all legal and economic systems without detracting from the Commission's efficiency. That would foster participation of the representatives of States which could not justify the cost of participation in the Commission's work unless they were members.

23. **Mr. Naidu** (Fiji) said that the Commission should continue to stress the pivotal role of international trade law in complementing the process of liberalization and giving leverage to the position of developing countries, which had great difficulty in keeping abreast of the major industrial powers on what was purportedly a level playing field. However, he hoped that the legal and regulatory mechanisms developed by the Commission would remedy those deficiencies. Privately financed infrastructure projects and assignment of receivables were issues with potential benefits for developing countries such as Fiji; his delegation therefore welcomed the adoption of the draft Convention on the Assignment of Receivables in International Trade and its annex on the priority rules and registration system, which would constitute a framework for cooperation between Governments, the financing community and international trade actors and would give hope to developing countries while safeguarding lenders' interests. Likewise, privately financed infrastructure projects were a facility to which he wished to draw attention, particularly that of the other members of the Pacific Island Forum, although Fiji had unfortunately been unable to participate in the Vienna Colloquium. He hoped that the Commission would provide technical assistance to promote the implementation of that mechanism in the region in the near future; he also hoped that Fiji would be given financial assistance so that it could participate as a member in the Commission's work. His Government was endeavouring to juggle its responsibilities and interests on key legal issues that conflicted on the conference agenda, prohibiting its effective involvement in a highly relevant body. He therefore urged the Commission to bear administrative difficulties in mind, although he recognized that the overwhelming calendar of the United Nations sometimes gave rise to such conflicts.

24. His delegation was in favour of enlarging the Commission if such a change would improve the representation of developing countries and of their interests in international trade. It was well known how poorly those countries fared in the liberalized world and, although that issue fell within the mandate of the World Trade Organization (WTO) and trade-related aspects of intellectual property rights (TRIPS), the Commission should in some way cushion the shocks and difficulties affecting those countries. Lastly, while recognizing the need for greater human and financial resources, he believed that priorities must be set in the Commission's work programme so that it could sustain its workload.

25. **Mr. Ogarrio Ramírez-España** (Mexico), Chairman of the United Nations Commission on International Trade Law, speaking of the Commission's work at its most recent session, stressed the importance of the adoption of the draft Convention on the Assignment of Receivables in International Trade, which would allow international capital to flow safely to other countries in the knowledge that the conditions governing receivables would be adequate and would simplify the procedure that developing countries must follow to obtain credit. Furthermore, the Commission's Model Law on Electronic Signatures provided a broad range of solutions to a current problem.

26. In the past, the Commission had had great success in its work on dispute settlement and, in that connection, international commercial arbitration had gained increasing acceptance in the world of trade and international investment. In light of the new problems that continued to arise and of the success of arbitration, the Commission considered that conciliation should also been encouraged. Since that procedure was, by its very nature, a voluntary one, minimal regulation to promote its development would be appropriate. The Commission would endeavour to promote conciliation by demonstrating all the advantages thereof. It was also working to fill some of the existing gaps in the area of transport law, a task of great importance and scope that would make it possible for the Working Group established for that purpose to accomplish much. The approach to security interests was similar to that taken in the case of assignment of receivables. The development of uniform regimes to regulate such interests would make that extremely valuable method of international financing even more available, particularly to developing countries, for which it was of great importance to be able to offer goods and future income as security and to receive private international financing for infrastructure projects.

27. The Commission's role would be incomplete without extensive dissemination; it therefore sought to collect the greatest possible number of decisions based on its instruments in order to present its point of view on a possible uniform interpretation with absolute respect for the freedom of each country's judges. The goal was to prepare a guide that would include interpretation of those legal instruments. Another aspect of the Commission's work that benefited developing countries, including Mexico, was technical assistance. In that regard, seminars had been held on many of the topics on which the Commission was working. In that connection, he urged States to continue to contribute to the Commission's two trust funds, of which one provided technical assistance and the other helped needy countries to send their representatives to the Commission's meetings. The topics proposed for the future work of the Commission made it necessary to create new working groups and, to that end, increased resources had been requested for the Commission secretariat.

Agenda item 167: Scope of legal protection under the Convention on the Safety of United Nations and Associated Personnel (A/55/637)

28. **Ms. Geddis** (New Zealand) said that her country had a longstanding commitment to United Nations and associated personnel and others involved on the ground in humanitarian operations in post-conflict situations. New Zealand had joined the international condemnation of the violent and sometimes fatal attacks on members of missions in the field. Unfortunately, the frequency and gravity of such attacks had continued to increase during the past decade. There was also a new and disturbing tendency to target humanitarian and, in particular, locally recruited personnel; the latter were particularly vulnerable and, sadly, accounted for the majority of casualties. Obviously, an adequate response to that situation required action on a range of fronts, but there was no doubt that international law had a special role to play. The Convention on the Safety of United Nations and Associated Personnel, which New Zealand and Ukraine had played a lead role in developing and to which several States had recently become parties, offered a legal framework for dealing with some of those crimes. Its full adoption and implementation constituted a first step in the establishment of a scheme

of legal protection for those who risked so much in the interests of peace. However, the Convention was not enough; its scope remained limited, it did not protect humanitarian workers not closely connected to United Nations operations and its application to locally recruited personnel was incomplete. Regrettably, the threats to personnel on the ground had no regard for the fine distinctions made in the Convention.

29. New Zealand welcomed the report of the Secretary-General on that issue, which analysed the issues related to the scope of legal protection under the Convention and included useful recommendations for interim and long-term legal steps which could be taken in response to those problems and which New Zealand supported; she would focus on two of them. Her Government believed that the recommendation that key provisions of the Convention should be incorporated into the status-of-forces or status-of-mission agreements concluded when a peacekeeping operation was deployed represented a useful interim step that it fully supported, and that the recommendation that Member States should consider the development of a protocol to the Convention in order to extend its scope and ensure its automatic application to all United Nations operations and categories of personnel was worthy of full discussion by experts.

30. The Committee's schedule allotted little time to that issue; thus, it could not fulfil the mandate entrusted to it by the General Assembly. It would therefore be appropriate to convene an ad hoc committee to consider all related matters and to propose solutions on the basis of the recommendations contained in the report of the Secretary-General.

31. **Mr. Valdes** (Chile), speaking on behalf of the countries of the Rio Group, recalled the background to the adoption of the Convention on the Safety of United Nations and Associated Personnel and said that, despite the adoption of that Convention in 1994, the safety of personnel, including those participating in humanitarian and peacekeeping operations, had continued to deteriorate, and in particular the abhorrent practice of using locally recruited personnel as an easy and preferred target had become widespread. After considering the suggestions made in the report of the Secretary-General on the topic, and aware that they would need to be considered in depth, the Rio Group supported the idea that a working group of the Committee should be established for that purpose; it would be able to produce an effective and universal instrument which would guarantee the protection of all United Nations personnel.

32. **Mr. Niehaus** (Costa Rica) said that his delegation endorsed the statement made by the representative of Chile on behalf of the Rio Group. Costa Rica expressed admiration for the professionalism, bravery and dedication of United Nations personnel in natural disasters and humanitarian crises, even at the cost of their own lives, as was illustrated by the case of the four United Nations staff members who had recently died during the bombing in Kabul. However, it felt that the 1994 Convention on the Safety of United Nations and Associated Personnel had serious limitations and defects. Costa Rica had ratified that instrument in 2000, but had had to make a reservation to its sphere of application.

33. In his Government's view, the application of that Convention during an armed conflict was problematic, since as soon as the United Nations became a combatant, the Convention could not be applied. In such cases, its personnel was protected by the 1949 Geneva Conventions and their protocols, and attacks perpetrated against personnel were not crimes under the 1994 Convention, but war crimes or legitimate military operations. The determination of whether or not international humanitarian law applied in such situations should be made objectively, in the light of events on the ground. That legal regime applied automatically as soon as a party effectively became a combatant. The Convention did not adequately reflect that concept, and article 2 merely excluded from its sphere of application operations which included collective measures involving the use of force. In such cases, international humanitarian law should have priority over the application of the Convention, and that was reflected in the reservation made by Costa Rica at the time of ratification.

34. His delegation supported the Secretary-General's intention to recommend to the General Assembly or the Security Council, as the case might be, that they should make a formal declaration of the existence of an exceptional risk so as to make the Convention applicable to United Nations operations which were not peacekeeping operations. It also agreed with the Secretary-General on the need to incorporate the key provisions of the Convention into the status-of-forces or status-of-mission agreements concluded with the host State. However, it believed that responsibility for personnel lay not only with the host State, but also with

other parties to the conflict. Costa Rica, like the Secretary-General, believed that local personnel should be considered part of United Nations personnel for the purposes of the Convention. However, it did not share the Secretary-General's ambitious interpretation of article 1 (b) (iii) concerning the personnel of humanitarian non-governmental organizations. Since the effectiveness of those bodies depended precisely on their impartiality and independence, only persons deployed under an agreement between the non-governmental organization concerned and the United Nations could be considered as associated personnel.

35. Lastly, he did not believe it necessary to designate the Secretary-General as a "certifying authority" in order to attest to the existence of an agreement or a declaration in accordance with the Convention. Nor was his delegation convinced of the value of adopting a protocol to extend the applicability of the 1994 Convention to situations which were better governed by international humanitarian law, or to attacks perpetrated against humanitarian non-governmental organizations.

36. **Mr. Bliss** (Australia) said that some recent events, such as the shooting down of a United Nations helicopter in Georgia and the attacks against UNICEF and UNHCR offices in Pakistan, confirmed the need to provide greater protection for United Nations and associated personnel. Australia, which had always been a reliable and substantial contributor to peacekeeping and other operations of the United Nations, regarded the safety of personnel as paramount, and welcomed the opportunity to consider the scope of the Convention on the Safety of United Nations and Associated Personnel. It was therefore keen to strengthen the protection afforded to such personnel and, in particular, supported the idea of incorporating key elements of the Convention into the status-of-forces and status-of-mission agreements concluded by the United Nations. Those elements included the obligation to prevent attacks against personnel participating in United Nations operations and the obligation to establish such attacks as crimes in the national law of the host State.

37. Australia also supported the Secretary-General's determination to protect United Nations and associated personnel involved in risky, non-peacekeeping operations. As indicated in his report, the Convention applied automatically to peacekeeping operations and, in order for it to apply to non-peacekeeping operations, the General Assembly or the Security Council needed to declare that an exceptional risk existed to the safety of United Nations personnel. Australia supported all measures to ensure that such declarations were made when necessary so as to ensure coverage by the Convention and welcomed proposals to achieve that goal.

38. Australia supported the Secretary-General's efforts to protect the personnel of humanitarian intergovernmental and non-governmental organizations not formally linked to United Nations operations. Although clearly the Convention did not apply to such personnel, there was a strong case for drawing up a separate international instrument to protect personnel who provided important humanitarian relief. Careful consideration would have to be given to the level of legal protection to be afforded, bearing in mind the various legal mandates under which United Nations and non-United Nations operations were authorized. Lastly, Australia strongly supported the establishment of an ad hoc group of the Committee as a priority to consider measures to strengthen the Convention's protective regime.

39. **Mr. Marechal** (Belgium), speaking on behalf of the European Union, said that the Central and Eastern European countries associated with the European Union, Bulgaria, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Romania, Slovakia and Slovenia, the associated countries Cyprus, Malta and Turkey, as well as Norway, EFTA country member of the European Economic Area, aligned themselves with his statement.

40. The dangers and risks faced by United Nations and associated personnel had continued to increase over the past decade, as illustrated by the recent case of the shooting down of a helicopter of United Nations observers in Georgia. The European Union unequivocally condemned deliberate attacks against personnel participating in United Nations missions and in humanitarian operations; it considered that situation of insecurity to be intolerable and called for the adoption of urgent measures to reinforce the safety of United Nations and associated personnel. Under international law, primary responsibility for the security and protection of humanitarian personnel and United Nations and associated personnel lay with the host Government. Parties involved in armed conflicts were also under an obligation, in accordance with the 1949 Geneva Conventions and their additional protocols, to ensure the safety of such personnel. In

that regard, the European Union welcomed the fact that the Rome Statute of the International Criminal Court qualified as a war crime attacks against personnel involved in humanitarian missions.

41. The Convention on the Safety of United Nations and Associated Personnel, which had been adopted in 1994, had entered into force in 1999, and had been ratified by 54 States, prohibited all attacks directed against United Nations and associated personnel, their equipment and official premises. However, attacks continued to increase to ever more alarming proportions, which had led the General Assembly, in its resolution 54/192 of 17 December 1999, to request the Secretary-General to submit a report containing an analysis and recommendations addressing the scope of the 1994 Convention. The report of the Secretary-General (A/55/637) described the attacks made upon the safety of personnel, the current system, and measures that could be taken to improve the safety of personnel. The Secretary-General indicated that the Convention was not working in a satisfactory way, in particular because it did not provide the necessary protection for United Nations and associated personnel, including locally recruited personnel. In order to remedy those shortcomings, the Secretary-General made a series of recommendations to strengthen the existing regime of the Convention and also suggested extending its scope through an additional protocol. The Committee could readily consider and adopt some of the recommendations, such as the proposal to incorporate the Convention's key provisions into status-of-forces or status-of-mission agreements, the obligation to prevent attacks against members of peacekeeping operations, the obligation to establish attacks against members of peacekeeping operations as crimes punishable by law and the obligation to prosecute or extradite the offenders. Other recommendations deserved a thorough in-depth analysis. The European Union stood ready to consider the recommendations of the Secretary-General and supported the establishment of a working group during the current session of the General Assembly.

42. **Mr. Tarabrin** (Russian Federation) said that the issue under consideration was very topical, since throughout the world hundreds of people participating in peacekeeping and humanitarian operations were the victims of attacks, such as the United Nations observers on the helicopter which had been shot down in Georgia on 7 October 2001 or the victims of the recent bombing in Kabul. The Russian Federation had its own experience in that respect. It had lost many nationals participating in United Nations peacekeeping operations in the context of conflict resolution in the area of the Commonwealth of Independent States. A reliable legal base must be established to ensure the safety of such personnel and the application of the 1994 Convention was essential in that respect. The safety of personnel would be considerably increased if universal participation was achieved in that Convention. The Russian Federation had ratified the Convention in April 2001 and called on all States to follow its example. His delegation expressed appreciation to the Secretary-General for his full report on the issue (A/55/637), which provided a useful basis for deliberations. However, it warned against the risk of hasty and drastic measures in that respect. Some of the provisions of the report had far-reaching consequences, and did not fully take into account all the aspects of conflicts in which United Nations personnel were involved. It also needed to be asked to what extent the extension of protection to the personnel of autonomous organizations not formally linked to the United Nations was justified. In order to consider those issues, an impartial and balanced approach must be taken, bearing in mind, inter alia, the current and future parties to the Convention; his Government was prepared to contribute to that effort.

43. **Mr. Pravednyk** (Ukraine) said that his Government considered the issue of the safety of United Nations and associated personnel a matter of high priority. In the past eight years, more than two dozen Ukrainian nationals serving as peacekeepers had lost their lives and another 50 had suffered serious injury. Just the day before, reports had come in of the tragic death of three Ukrainians taking part in the United Nations Observer Mission in Georgia as a result of an attack against their helicopter which had resulted in the death of six other people too.

44. Ukraine had been among the initiators of the elaboration of the Convention on the Safety of United Nations and Associated Personnel, adopted in 1994. However, the provisions of the Convention had proved to be inadequate to ensure the same level of protection for United Nations and associated personnel, including locally recruited personnel, engaged in operations other than those specifically authorized by the Security Council or the General Assembly. The scope of the legal protection provided by the Convention must be extended, and his delegation supported the elaboration and adoption of an additional protocol to that effect.

Convinced of the need to strengthen protection for United Nations and associated personnel, his delegation also supported the in-depth consideration of the Secretary-General's report by the General Assembly and was in favour of establishing an ad hoc committee for that purpose. Another important aspect of enhancing the protection of humanitarian assistance personnel and associated personnel was the need to ensure respect by all parties for the rules of international law, including international humanitarian law, and for the neutral and impartial character of the work of such personnel. It should be emphasized in that regard that the International Criminal Court could play an important role in bringing to justice those responsible for serious violations of international humanitarian law. His delegation also firmly supported the idea of including specific practical measures based on the provisions of the Convention in status-of-forces or status-of-mission agreements.

45. **Mr. Gomaa** (Egypt) said that his country had contributed personnel to many relief operations carried out by the United Nations in which many of its nationals had been disabled, injured or killed. His delegation welcomed the Secretary-General's report and his suggestion that provisions aimed at greater protection of United Nations personnel should be incorporated in agreements between the United Nations and the countries where its operations were deployed. The Convention left room for much doubt and suspicion as to the categories of personnel to which it referred and its implications for the sovereignty of the countries concerned. His delegation had not yet decided on its position with regard to the need to elaborate an additional protocol and recommended that other possibilities should be considered, taking into account the interests of different countries. Further consideration was warranted before hasty decisions, such as the establishment of a working group, were adopted. The established practice of the United Nations was to exhaust all possibilities before creating an ad hoc committee or working group of the Sixth Committee.

46. **Mr. Fomba** (Mali), referring to the report of the Secretary-General on the scope of legal protection under the Convention on the Safety of United Nations and Associated Personnel (A/55/637), said that, although a text might be perfect from the technical standpoint, its true value would depend on whether it was regularly and responsibly applied. The consensual and voluntary nature of international law was at once an advantage and a limitation on its efficacy. It was essential that there should be sound thinking to begin with on concepts and methods and a precise definition of the basic issues, such as the absolute or relative concept of safety, the notion of personnel and a clear view of the type of protection regime desired and the appropriate instrument for the purpose. The Convention provided the essential basis by embodying the following fundamental ideas: the absolute duty to ensure the safety and security of personnel (article 7), the obligation to cooperate (article 7); the obligation to prevent through due diligence (article 11); the obligation to disseminate the Convention (article 19); the obligation to prosecute violations (article 14); and the establishment of a monitoring and review mechanism (article 23).

47. His delegation believed that, while prosecution was necessary, prevention was even more important. In that regard, it was in favour of the idea of setting up a procedure whereby the Security Council or the General Assembly would make a "declaration" that there existed an exceptional risk to the safety of the personnel, although that step would not resolve the problem of humanitarian operations conducted under a standing mandate. The suggestion that the Secretary-General might be designated the "certifying authority" had some practical value. Incorporating key provisions of the Convention in the status-of-forces or status-of-mission agreements would also improve the situation in cases where the host State was not a party to the Convention. However, his delegation shared the opinion of the Secretary-General that the elaboration of a protocol was the most satisfactory solution, since it would eliminate the need for a "declaration" and make the scope of the Convention unconditional *ratione materiae* and *ratione personae*. If the requirement for a declaration was retained, his delegation would support the extension *ratione personae* of the right of initiative of the Secretary-General. Lastly, the principle of unconditional, systematic and automatic protection should govern any legal framework on the subject, and any mechanism or instrument based on that principle deserved support.

The meeting rose at 12.40 p.m.

United Nations A/C.6/56/SR.5

General Assembly
Fifty-sixth session
Official Records

Distr.: General
17 October 2001

Original: English

Sixth Committee

Summary record of the 5th meeting

Held at Headquarters, New York, on Tuesday, 9 October 2001, at 3 p.m.

Chairman: Mr. Lelong ..... (Haiti)

Contents

Agenda item 167: Scope of legal protection under the Convention on the Safety of United Nations and Associated Personnel (*continued*)

This record is subject to correction. Corrections should be sent under the signature of a member of the delegation concerned *within one week of the date of publication* to the Chief of the Official Records Editing Section, room DC2-750, 2 United Nations Plaza, and incorporated in a copy of the record.

Corrections will be issued after the end of the session, in a separate corrigendum for each Committee.

01-57204 (E)

The meeting was called to order at 3.10 p.m.

Agenda item 167: Scope of legal protection under the Convention on the Safety of United Nations and Associated Personnel (*continued*) (A/55/637)

1. **Mr. Yamamoto** (Japan) extended his condolences to the families affected by the recent tragic events in Abkhazia and Kabul, which brought home the importance of the issues that the Committee had before it under agenda item 167.

2. He was pleased to note that the report of the Secretary-General on the scope of legal protection under the Convention on the Safety of United Nations and Associated Personnel (A/55/637) had finally been submitted for the Committee's consideration. All parties to a conflict in which a United Nations operation was deployed, including host countries, neighbouring States and non-State actors, must take appropriate steps to ensure the safety and security of the personnel involved in accordance with international law. He therefore welcomed the entry into force of the 1994 Convention but regretted that only 54 States had ratified it and that, with the exception of Croatia, no State in which United Nations peacekeeping forces were deployed had done so. He urged States which had not yet become parties to the Convention and, in particular, those which were members of the Security Council, to remedy that situation as soon as possible. The Security Council should also urge Member States having United Nations operations in their territory to sign and ratify the Convention, thereby acknowledging their political and legal responsibility to protect United Nations and associated personnel working within their borders.

3. The increasing complexity of peacekeeping operations made it crucial to expand the scope of the Convention to include the staff of humanitarian non-governmental organizations. He therefore endorsed the Secretary-General's proposed elements for a protocol that would ensure such protection and the idea of establishing an ad hoc working group to consider the matter. It was incumbent on all Member States to translate words into concrete action aimed at improving the security of the dedicated men and women working for global peace.

4. **Mr. Su** Wei (China) said that the recommendations contained in the Secretary-General's report merited serious consideration. Priority should be given to implementing of the existing provisions of the Convention by incorporating them into the status-of-forces or status-of-mission agreements concluded between the United Nations and the host countries of peacekeeping operations. Specific procedures for the "trigger mechanism" for the applicability of the Convention should be developed; he had no objection to designating the Secretary-General as "certifying authority" to attest that a "declaration" of exceptional risk had been made by the General Assembly or the Security Council. The status of personnel participating in United Nations operations could be certified through agreements concluded between the United Nations and the relevant Governments or international organizations or, alternatively, between the Secretary-General of the United Nations or other international organizations on the one hand, and non-governmental organizations on the other.

5. His delegation considered the existing provisions of the Convention to be adequate and appropriate as to the scope of protection and conditions for application. Expansion of its coverage to include the staff of non-governmental organizations engaged in humanitarian activities but not part of United Nations operations could give rise to numerous difficulties in implementation. In the light of the constant attacks on, and frequent casualties among, personnel participating in United Nations operations, it was important to stress the role of the Convention in protecting their safety. His Government was making active preparations for accession to that instrument.

6. **Ms. Čačić** (Croatia) said that the conflict and crisis situations of the late twentieth century were characterized by a reversed pattern of victimization and by the variety of actors involved. As the number of emergencies in which the United Nations provided assistance and protection continued to increase, so did the number of security incidents; only a fraction of the perpetrators had been brought to justice. While the rights and duties of the parties to armed conflicts had been codified under international humanitarian law, a whole array of semi-conflictual crises and emergencies fell short of the definition of armed conflict. United Nations and associated personnel were involved not only in peace enforcement, but also in humanitarian operations, preventive diplomacy, peace-building and post-conflict engagement, often in dangerous environments that exposed them to violence, threats,

harassment, hostage-taking, arbitrary arrest, detention and even murder.

7. By imposing the duty to criminalize prohibited acts and undertake prompt, adequate judicial action under the "prosecute or extradite" principle, the Convention had filled the gap between the Geneva Conventions and the standard of treatment based on the Convention on the Privileges and Immunities of the United Nations and related instruments. The entry into force of the Rome Statute would further upgrade the existing protection regime. However, as the Secretary-General had noted, the "trigger mechanism" designed by the Convention made that instrument virtually inapplicable to United Nations humanitarian operations acting under a standing, statutory mandate, while the requirement of an institutionalized relationship between the United Nations and humanitarian agencies excluded many of the Organization's non-governmental organization partners from the scope of the Convention.

8. Her delegation therefore endorsed the proposals contained in the Secretary-General's report and was in favour of establishing a working group or other subsidiary body to develop an additional protocol that would eliminate the conditionalities that prevented the Convention's automatic application to all United Nations operations and to the types of humanitarian personnel not currently covered. Incorporation of the instrument's key provisions into status-of-forces or status-of-mission agreements would enhance their impact by making them binding States which were not parties to the Convention. Lastly, it was important to note that the impunity of perpetrators was a primary obstacle to ensuring universal respect for the blue flag; the light sentences handed down in the trial of those responsible for the savage killings of United Nations staff members in West Timor clearly sent the wrong message. Ultimate responsibility for enforcement of the Convention lay with Governments.

9. **Mr. Vámos-Goldman** (Canada) said that as civilians increasingly became targets in contemporary conflicts, those providing protection and assistance to them were also likely to find themselves under attack. Working under the United Nations flag was no longer a guarantee of protection, and the fact that humanitarian personnel continued to operate in such insecure environments was a testament to their dedication. While attacks on such workers were not new, they appeared to be increasing at an alarming rate.

10. The States hosting United Nations and humanitarian personnel had the primary responsibility for their safety and security and for prosecuting the perpetrators of attacks against them. Accordingly, Canada had ratified the Rome Statute and had incorporated its provisions into domestic law so that it could prosecute intentional attacks on humanitarian personnel. It would soon introduce legislation to ratify the Convention on the Safety of United Nations and Associated Personnel and urged Member States which had not yet done so to follow suit.

11. The Convention applied, however, only if the Security Council or the General Assembly had declared that there existed an exceptional risk; thus, United Nations and associated personnel who provided humanitarian relief to refugees or children outside the area of a peacekeeping operation and humanitarian personnel not associated with the United Nations were not protected under the Convention. His delegation therefore supported immediate implementation of the Secretary-General's proposals to the effect that he should recommend to the General Assembly or the Security Council that a declaration of exceptional risk should be made where the situation warranted and that the Convention's key provisions should be incorporated into status-of-forces or status-of-mission agreements.

12. His delegation also endorsed the recommendations that the Secretary-General should be designated as the "certifying authority" on matters arising under the Convention and that consideration should be given to developing an optional protocol extending the Convention's protection to all United Nations operations and to humanitarian personnel not formally associated with the Organization or empowering the Secretary-General to declare that an exceptional risk existed. He urged the international community to give serious consideration to those recommendations and strongly supported the proposal for the establishment of an ad hoc working group on the matter.

13. **Mr. Al-Kadhe** (Iraq) said that Iraq was anxious to ensure the security and safety of United Nations personnel and would support any consensus proposal to achieve that goal. United Nations personnel must adhere to the mandates entrusted to them, must refrain from any action that might prejudice their status as international civil servants accountable to the United Nations and must comply strictly with the provisions of Article 100 of the Charter.

14. In connection with paragraph 15 of the Secretary-General's report (A/55/637), it should be said that the activities of non-governmental organizations must have the approval of the countries concerned. An agreement between the United Nations and such an organization was not sufficient to give it legal standing. Without the approval of States, it would be difficult to include such organizations in any future agreement to extend the scope of legal protection. International personnel entrusted with United Nations activities were required to respect the principles of international humanitarian law.

15. Iraq believed that the full Sixth Committee should be the main forum for the discussion of the safety and security of United Nations personnel, and it saw no need to establish a working group for that purpose. There was an urgent need for further clarification and exchange of views concerning the report of the Secretary-General.

16. **Mr. Naidu** (Fiji) said that his Government was a signatory to the Convention; Fiji had supplied peacekeeping forces in at least eight areas of occupation, and nearly 40 of its personnel had lost their lives while protecting civilians in troubled areas. The current system of security management was highly unsuitable, as it had been designed to meet the requirements of the United Nations system 20 years previously. While the Convention filled some of those gaps, humanitarian non-governmental organizations and locally recruited personnel had become easy targets for brutal and even fatal attacks as a direct result of the nature of their work and of the lack of coverage provided by the Convention.

17. His delegation realized that some of the recommendations contained in the Secretary-General's report might not meet with the approval of all Member States; regardless of those differences, however, the matter required discussion. His own delegation endorsed the proposal that status-of-forces and status-of-mission agreements should include specific provisions for the improved safety and security of staff in accordance with the Convention. The fact that between January 1992 and September 2000, 198 staff members had been killed and 240 taken hostage or kidnapped, most of them under brutal circumstances, could not be considered normal. It was not enough to give staff hardship pay and to expect those not covered under the Convention to protect their own lives, particularly when the nature of their work was essentially the same. As a first step, his delegation supported the proposal to establish an ad hoc working group to give due consideration to the matter.

18. **Mr. Biato** (Brazil) announced his delegation's endorsement of the statement made by the delegation of Chile on behalf of the Rio Group. An exponential rise in the number and intensity of regional conflicts due to a variety of causes, numerous casualties and an unprecedented upsurge of violence born of deprivation and frustration had been worrying features of the last decade. Over the same period, the United Nations had stepped up its efforts to bring peace and stability to many strife-ridden areas. As United Nations personnel had inevitably spearheaded those operations, they had sustained many injuries, and despite the entry into force of the Convention on the Safety of United Nations and Associated Personnel in 1999, the figure was still going up at an alarming rate.

19. His delegation therefore thanked the Secretary-General for his report (A/55/637), which underscored the sad reality that, around the world, United Nations staff were still being attacked and killed with almost complete impunity. Dramatic events in the last few days had shown how risky the work of peacemakers was. Hence there was clearly a need to bolster the security of personnel and enhance the effectiveness of the Convention.

20. His delegation wholeheartedly supported the suggestion that key provisions of the Convention should be included in future status-of-forces and status-of-mission agreements in order to improve the safety of personnel, since it was consistent with the thrust of the second report of the Security Council Working Group on Peacekeeping Operations (S/2001/900).

21. While such measures would go a long way towards overcoming the limitations and inadequacies of the existing regime for protecting United Nations and associated personnel, it was only appropriate to draw attention to the plight of other groups of persons, like humanitarian workers and locally recruited personnel, who constituted most of the casualties in the ongoing violence. The existing legal framework offered by international humanitarian law was woefully inadequate when it came to defending those groups, who had to rely on the credibility and effectiveness of their work to ensure that they did not become targets of unprovoked attacks.

22. His delegation had taken careful note of the additional recommendations and looked forward to engaging in a constructive dialogue to address the urgent concerns set out in the Secretary-General's report. It considered that those issues should be taken up by the Sixth Committee in an ad hoc working group during the fifty-sixth session of the General Assembly, since that would be an ideal forum to secure the necessary support for the Convention so that all relief workers could go about their work in peace and safety.

23. **Mr. Mangueira** (Angola) said that, although his delegation regarded the Secretary-General's report (A/55/637) as a good basis for discussion, it did have some concerns about the proposals made in that document. Angola condemned the violence and attacks directed against individuals participating in field missions and made every effort to protect all personnel engaged in security and protection operations. That was why his country usually signed special protocols on the subject with the United Nations. His delegation did not, however, understand why a Government should grant special status to a small group of its own population because they were working for the United Nations, since a Government must, by law, protect all its citizens and guarantee their safety.

24. Angola had difficulty in accepting the ideas concerning locally recruited personnel and the granting of special protection to the staff of non-governmental organizations. Any such organization working in Angola had to be registered with the Ministry of Justice and to fulfil certain legal conditions; consequently his delegation was not in favour of allowing any non-governmental organization chosen by the United Nations to act in a country without the consent of its Government. His delegation would prefer an agreement between the potential host Government and the United Nations, where both sides could determine the scope of obligations in an operation. His country also had misgivings about the actual feasibility in wartime of determining to whom a person responded.

25. As a country where humanitarian relief played a big role and where the latter was supplied by the many foreign and locally recruited staff employed by non-governmental organizations and the United Nations, Angola was aware of the need to strengthen the security of such personnel; all sides had to adopt a cautious approach, however, in order to reach a common position. The conclusion of a protocol as proposed in the report was still premature, as more reflection on the subject was required.

26. **Mr. Hetesy** (Hungary) said his delegation fully supported the European Union's statement on the scope of legal protection under the Convention. On 8 October, nine members of the United Nations Mission in Georgia (UNOMIG), including one Hungarian, had been killed in Abkhazia. That outrageous crime had not only added to the ever-lengthening fatality list, but also served as an infamous example of the problems caused by the inadequacies of the protective regime introduced by the 1994 Convention. UNOMIG had always been a difficult peacekeeping operation because its personnel had been attacked, bombed, harassed and kidnapped and, despite the adoption of Security Council resolution 1364 (2001) just two months earlier, tragedy had struck again.

27. Hungary, as a party to the 1994 Convention and as a troop-contributing country, was entitled to expect that the perpetrators of the above-mentioned crimes would be brought to justice. Yet it was plain that the Convention carried no weight with parties to conflicts because of the shortcomings in it, which were listed in the Secretary-General's report (A/55/637). That was an untenable situation, and for that reason the Committee had a moral duty to examine the report with a view to improving the existing framework. His delegation therefore supported the establishment of a working group to that end and, as an immediate measure, the inclusion of the elements of the Convention in status-of-forces and status-of-mission agreements.

28. **Mr. Mannan** (Bangladesh) expressed his delegation's condolences for the previous day's incident in Georgia.

29. As a provider of significant numbers of peacekeeping personnel, his Government was anxious to ensure the greatest possible protection to all parties concerned under the Convention. He deplored the continuing attacks on United Nations and associated personnel and drew attention to the vulnerability of locally recruited personnel to acts of physical violence, abduction, hostage-taking, kidnapping, harassment and illegal arrest and detention. Bangladesh was a party to the Convention and hosted many humanitarian and community projects carried out by intergovernmental, governmental and non-governmental organizations in cooperation with various United Nations agencies. Thus, many of its citizens were engaged in United

Nations sponsored activities, often without coverage under the Convention; such an anomaly should be addressed immediately by expanding the scope of legal protection under the Convention.

30. He welcomed the Secretary-General's report and endorsed the proposal to develop an optional protocol that would extend the Convention's scope and ensure its automatic application to all United Nations operations and categories of personnel not currently covered. In principle, he endorsed the suggestion to dispense with the requirement of a "declaration" as a condition for the Convention's applicability and the interim measures suggested in the report. Lastly, he called on member States to become parties to the Convention and to support the immediate establishment of an ad hoc working group in order to help the United Nations and its agencies fulfil their commitment to the safety of staff members, both permanent and temporary, and of associated personnel.

31. **Mr. Abdalla** (Sudan) said that his delegation welcomed the report of the Secretary-General (A/55/637) and believed that it was essential to accord the utmost importance to the safety of those working in the relief and peacekeeping fields. The unique agreement concluded by the Sudan and the United Nations in connection with Operation Lifeline Sudan could serve as a model for others on the regulation of relief work and the protection of those engaged in it. The Government of the Sudan had also taken an unprecedented step when it had signed the 1998 Rome agreement with the rebel movement in the southern Sudan with a view to providing greater protection to humanitarian relief workers.

32. While, by their nature, countries and Governments could be held accountable for compliance with the relevant rules governing the protection of those engaged in humanitarian work, non-State actors continued to show complete disregard for them. The atrocities committed by the Sudan People's Liberation Army in the southern Sudan, including the murder of four workers with the International Committee of the Red Cross, would readily come to mind.

33. The small number of States that had acceded to the Convention on the Safety of United Nations and Associated Personnel clearly reflected a lack of agreement on its substance. Most States had preferred not to accede, thus expressing their genuine concerns in that regard.

34. His delegation shared the view that there should be a further general exchange of views on the topic, and it had reservations with regard to any hasty measures to form a working group to produce an additional protocol. It was convinced that other steps could be taken to meet the concerns currently being raised.

35. The Sudan renewed its commitment to its position of principle advocating respect for the norms of international humanitarian law, bilateral agreements and national legislation on the part of all parties involved in humanitarian assistance and peacekeeping operations, and it called for full account to be taken of the guiding principles for humanitarian assistance annexed to General Assembly resolution 46/182.

36. **Mr. Hoffmann** (South Africa) said that his delegation was deeply concerned by the dangers and security risks faced by United Nations and associated personnel at field level and agreed that everything possible had to be done to ensure their safety. While the 1994 Convention had some shortcomings, it constituted an important contribution to international law on the legal protection of persons participating in humanitarian operations. South Africa was therefore holding consultations with a view to acceding to the Convention.

37. His delegation thought that the proposal empowering the Secretary-General to issue a declaration to trigger the protection mechanism was helpful. The option to amend the Convention, rather than draft a new protocol, should be explored; the suggestion that the scope of the Convention should be extended to humanitarian personnel not under contract with the United Nations required careful study, however, since it raised some complex legal issues. It would give enhanced protection to all humanitarian personnel, regardless of their relationship with the United Nations, whereas other civilians in a conflict zone would have to rely on the Geneva Conventions. It would also be very difficult to incorporate such provisions into domestic legislation. The practical implications of having two separate protection regimes should be investigated, possibly by the International Law Commission.

38. If the Convention as it stood was not working well, it seemed unlikely that amendments expanding its scope would serve the desired purpose, and the possibility of a protocol to remedy inadequacies should

be discussed. Similarly, the option of using the review mechanism in article 23 should be considered, rather than immediately embarking on a new drafting exercise. It was possible that widening the scope of the Convention might weaken the protection currently enjoyed by personnel covered by it and that some non-United Nations humanitarian programmes would have to make a conscious decision to remain outside the United Nations umbrella protection in order to preserve their neutrality.

39. His delegation had no fixed views on whether the issues raised should be examined by the Sixth Committee or by an ad hoc group of the Committee.

40. **Mr. Kittichaisaree** (Thailand) said that since the peacekeeping operation in East Timor was under Thai command, his country had a strong interest in ensuring the safety of United Nations and associated personnel.

41. His delegation thought that the Secretary-General's report (A/55/637) was comprehensive, well-reasoned and raised issues of fundamental concern. The recommendation that key provisions of the 1994 Convention should be incorporated into status-of-forces and status-of-missions agreements was a sensible way of ensuring that the crucial clauses of the Convention would apply even when the host State was not a party to the Convention.

42. The proposals aimed at securing greater protection in risky non-peacekeeping operations and enabling the Secretary-General to recommend the adoption of a declaration of exceptional risk to the General Assembly or the Security Council had merit, as did the suggestion that the Secretary-General should be designated "certifying authority".

43. Although there were good reasons for drafting an instrument to protect the staff of humanitarian intergovernmental and non-governmental organizations not formally linked to the United Nations, in-depth consideration would have to be given to ways of granting them adequate protection while maintaining their independence. Thought could be given to a protocol to the Convention so as to extend its scope; in addition, an ad hoc committee might be a useful means of making sure that such matters, which were of utmost importance, received the attention they deserved.

The meeting rose at 4.30 p.m.